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| 10/588,748 | | Karin Golz-Berner | 3975-050 | 4478 |
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| AKERMAN SENTERFITT | | | EXAMINER | |
| P.O. BOX 3188 | | | MI, QIUWEN | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/588,748 | GOLZ-BERNER ET AL. | |
| | Examiner | Art Unit | |
| | QIUWEN MI | 1655 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 16 May 2008.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-9 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-9 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 8/9/2006 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date 11/9/2006.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application
 6) Other: _____.

DETAILED ACTION

Claims Pending

Claims 1-9 are pending. Claims 1-9 are examined on the merits.

Specification/Abstract Objections

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

In the instant case, Applicant is required to delete "The invention relates to" on line 1 of the Abstract to be more clear and concise. The first letter of "a" in line 1 should be capitalized after the deletion. Applicant is also required to delete "Said" in line 2.

Claim Rejections –35 USC § 112, 2nd

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites “W/O” (line 1), and it is not clear what the abbreviation stands for, and Applicant is requested to spell out the full name of the abbreviation.

Claim 1 also recites “by weight” (lines 3-6), which is not clear whether Applicant means “w/w” or “w/v”.

Claim 1 further recites “in addition to usual cosmetic auxiliaries, carriers, active agents or mixtures thereof, which make up the remainder up to 100%”, which is not proper English. Applicant is suggested to recite "and pharmaceutically acceptable carrier" instead.

The following claims have no antecedent basis for the limitation:

"the remainder" in claim 1, line 8;

"the hexapeptide" in claim 2, line 2; claim 9, lines 5.

"the seeds" in claim 3, line 2;

"the bark" in claim 7, line 4;

Claim 6 recites “& PEG” in line 2. “&” is a symbol for "and", which is not acceptable. Applicant is also need to spell out the full name of abbreviation “PEG”.

Claim 8 recites “the An anti-wrinkle” in claim 8, line 1, which is not proper English, Applicant is requested to delete "an".

Claim 7 recites “the bark of Quebracho blanco, 0.1-10% by weight of a silkworm extract”, and the metes and bound of claim 7 is uncertain because it is unclear as to the identification of the ingredients to which Applicant intends to direct the subject matter. Although

the use of common names or traditional/ethnopharmacological names is permissible in patent applications, the standard Latin genus-species name of each ingredient should accompany non-technical nomenclature as a means for identifying the subject botanical and animal matter noted in this application. Applicant may overcome the rejection by placing the genus-species name of “X” in parentheses after the term (s) “X”. Please make sure to write the Latin name in the proper format, wherein the first word is capitalized, the second word is lowercase and the entire name is italicized.

Therefore, the metes and bounds of claims are rendered vague and indefinite. The lack of clarity renders the claims very confusing and ambiguous since the resulting claims do not clearly set forth the metes and bounds of the patent protection desired.

All other cited claims depend directly or indirectly from rejected claims and are, therefore, also, rejected under U.S.C. 112, second paragraph for the reasons set forth above.

Claim Rejections –35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of CH 258982, Honda et al (JP 2003048812 A), Chevalier et al (FR 2837705 A1), Hoshino et al (JP 2004010526 A), and Rises & CO DR (DE 3319764 A1).

CH 258982 teaches a cosmetic composition for skin care comprising poppy-seed (the same as *Papaver somniferum*, see Wikipedia online) oil (thus an extract), sunflower-seed oil (active agent), and water etc (see Abstract).

CH 258982 does not teach the incorporation of *Passiflora*, *Mentha*, *Myrtus* or W/O silicone oil system into the composition.

Honda et al teach a cosmetic composition for ameliorating antiaging of the skin (thus skin care) comprising *Passiflora* (see Abstract, full translation has been ordered).

Chevalier et al teach a cosmetic composition for anti-wrinkle and anti-aging purpose (thus skin care) comprising *Myrtle* (the same as *Myrtus*, see Wikipedia online) oil (thus an extract) etc (see Abstract, full translation has been ordered).

Hoshino et al teach a cosmetic composition skin care comprising *Mentha piperita* etc (see Abstract, full translation has been ordered).

Rises & CO DR teaches a composition with a W/O emulsion for skin care comprising silicone oil (see Abstract, full translation has been ordered).

"It is prima facie obvious to combine two compositions or more each of which is taught by the prior art to be useful for the same purpose, in order to form a third composition to be used

for the very same purpose ...[T]he idea of combining them flows logically from their having been individually taught in the prior art." *In re Kerkhoven*, 626 F.2d 846, 850, 205 USPQ 1069, 1072 (CCPA 1980) (citations omitted).

In the instant case, all of the above-listed ingredients were known for skin care. Thus, one of ordinary skill in the art would have had a reasonable expectation that the combination of these compounds would have been additively beneficial for skin care.

It would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to combine the instant ingredients for their known benefit since each is well known in the art for skin care. This rejection is based on the well established proposition of patent law that no invention resides in combining old ingredients of known properties where the results obtained thereby are no more than the additive effect of the ingredients, *In re Sussman*, 136 F.2d 715, 718, 58 USPQ 262, 264 (CCPA 1943).

It has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F2d 454,456,105 USPQ 233; 235 (CCPA 1955). see MPEP § 2144.05 part II A. Although the prior art did not specifically disclose the amounts of each constituent, it would have been obvious to one of ordinary skill in the art at the time Applicants' invention was made to determine all operable and optimal concentrations of components because the concentrations of the claimed components are art-recognized result effective variables because they have the

ability for skin care, which would have been routinely determined and optimized in the pharmaceutical art.

Accordingly, the instant claims, in the range of proportions where no unexpected results are observed, would have been obvious to one of ordinary skill having the above cited references before him.

Therefore, it would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to combine the inventions of CH 258982, Honda et al, Chevalier et al, Hoshino et al, and Rises & CO DR since all of them teach compositions for skin care individually in the art. Since all the compositions yielded beneficial results for skin care cosmetics, one of ordinary skill in the art would have been motivated to make the modifications. Regarding the limitation to the amount of the components in the composition, the result-effective adjustment in conventional working parameters is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Claims 1-4, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over CH 258982, Honda et al, Chevalier et al, Hoshino et al, and Rises & CO DR as applied to claims 1,

3, and 4 above, and further in view of Passerini (Antiaging synthetic hexapeptides, Cosmetic Technology (Milano, Italy) (2002), 37-39).

The teachings of CH 258982, Honda et al, Chevalier et al, Hoshino et al, and Rises & CO DR are set forth above and applied as before.

The combination CH 258982, Honda et al, Chevalier et al, Hoshino et al, and Rises & CO DR do not specifically teach hexapeptide acetyl-Glu-Glu-Met-Gln-Arg-Arg-NH2 as an additional active agent in the composition.

Passerini teaches that some peptides mimic the anti-wrinkle effects of Botox (botulinum neurotoxin type A). The hexapeptide Ac-EEMQRR-NH2 (part of the N-terminal region of SNAP-25) can inhibit the Ca-dependent release of catecholamines from chromaffin cells and is of value for antiaging cosmetic application (see Abstract, full translation has been ordered).

Therefore, it would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use the synthetic hexapeptide from Passerini since Passerini teaches that the is of value for antiaging cosmetic application. Since all the compositions yielded beneficial results for skin care cosmetics, one of ordinary skill in the art would have been motivated to make the modifications. Regarding the limitation to the amount of the components in the composition, the result-effective adjustment in conventional working parameters is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Claims 1, 3, 4, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over CH 258982, Honda et al, Chevalier et al, Hoshino et al, and Rises & CO DR as applied to claims 1, 3, and 4 above, and further in view of Golz-Berner et al (US 6,426,080 B1).

The teachings of CH 258982, Honda et al, Chevalier et al, Hoshino et al, Rises & CO DR are set forth above and applied as before.

The combination of CH 258982, Honda et al, Chevalier et al, Hoshino et al, and Rises & CO DR do not specifically teach Quebraco blanco bark extract, a silkworm extract, hydrogel, and phospholipids in the composition.

Golz-Berner et al teach a cosmetic preparation that are particularly effective against free radical aggression comprising a Quebraco blanco bark extract containing at least 90 wt.% proanthocyanidin oligomers, a silkworm extract, hydrogel, phospholipids, and water. Golz-Berner et al also teach that the preparations have protection factors of between 40 and 200 (see Abstract). Golz-Berner et al further teach that a wide range of compounds maybe used as softeners, such as silicon oils (col 7, lines 1-5), and cosmetic preparations with may exist as O/W emulsions or W/O emulsions (col 7, lines 5-10).

Therefore, it would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use the Quebraco blanco bark extract, a silkworm extract, hydrogel, phospholipids, and water from Golz-Berner et al since Golz-Berner et al teach that the preparation has protection factors of between 40 and 200. Since all the compositions yielded

beneficial results for skin care cosmetics, one of ordinary skill in the art would have been motivated to make the modifications. Regarding the limitation to the amount of the components in the composition, the result-effective adjustment in conventional working parameters is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Claims 1, 3, 4, 5, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over CH 258982, Honda et al, Chevalier et al, Hoshino et al, and Rises & CO DR as applied to claims 1, 3, and 4 above, and further in view of Kamei et al (US 2004/0091439), as evidenced by Sakuta et al (US 6,426,080 B1)*.

The teachings of CH 258982, Honda et al, Chevalier et al, Hoshino et al, Rises & CO DR are set forth above and applied as before.

The combination of CH 258982, Honda et al, Chevalier et al, Hoshino et al, and Rises & CO DR do not specifically teach cyclotetrasiloxane, Dimethicone & PEG 10 dimethicone crosspolymer & PEG 15 dimethicone crosspolymer in the composition.

Kamei et al teach a cosmetic composition for skin care [0055] comprising KSG-210. Kamei et al also teach that examples of silicone oils which can be used include cyclotetrasiloxane etc [0045]. Kamei et al also teach that the composition provides good water

resistance and sebum resistance a low aggregation tendency and an excellent dispersibility (see Abstract).

As evidenced by Sakuta et al, the INCI name of KSF 210 is dimethicone, dimethicone (PEG-10/15) crosspolymer [0119].

Therefore, it would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use dimethicone (PEG-10/15) crosspolymer (KSG-210) from Kamei et al since Kamei et al teach that the composition provides good water resistance and sebum resistance, a low aggregation tendency and an excellent dispersibility. Since all the compositions yielded beneficial results for skin care cosmetics, one of ordinary skill in the art would have been motivated to make the modifications. Regarding the limitation to the amount of the components in the composition, the result-effective adjustment in conventional working parameters is deemed merely a matter of judicious selection and routine optimization which is well within the purview of the skilled artisan.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

*This reference is cited merely to relay an intrinsic property and is not used in the basis for rejection *per se*.

Claims 1, 3, 4, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over CH 258982, Honda et al, Chevalier et al, Hoshino et al, and Rises & CO DR as applied to claims 1, 3, and 4 above.

The teachings of CH 258982, Honda et al, Chevalier et al, Hoshino et al, Rises & CO DR are set forth above and applied as before.

The combination of CH 258982, Honda et al, Chevalier et al, Hoshino et al, and Rises & CO DR do not specifically teach the cosmetic contains neither pigment nor powder.

It would have been *prima facie* obvious for one of ordinary skill in the art at the time the invention was made to use a cosmetic composition contains neither pigments nor powder since pigments and powder are not indispensable components in a cosmetic composition. For instance, none of the references taught by CH 258982, Honda et al, Chevalier et al, Hoshino et al, and Rises & CO DR include a pigment or powder in the composition, and whether pigment or powder is included in a cosmetic composition is purely optional, which is deemed merely a matter of judicious selection which is well within the purview of the skilled artisan.

From the teachings of the references, it is apparent that one of the ordinary skills in the art would have had a reasonable expectation of success in producing the claimed invention.

Thus, the invention as a whole is *prima facie* obvious over the references, especially in the absence of evidence to the contrary.

Conclusion

No claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Qiuwen Mi whose telephone number is 571-272-5984. The examiner can normally be reached on 8 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

QM

/Michele Flood/
Primary Examiner, Art Unit 1655